

ARTICLE X. QUARRY, SAND, AND GRAVEL BUSINESSES

DIVISION 1. GENERALLY

Secs. 98-281 - 98-300. Reserved.

DIVISION 2. SAND AND GRAVEL DISTRICT (SGD)

Sec. 98-301. Established; purpose.

A sand and gravel district (SGD) is a special zoning district allowing the operation of a sand or gravel extraction operation where soil, sand, gravel, and clay may be removed for commercial use on or off the property. Additional uses are specifically noted in section 98-302, such as concrete and asphalt production and other uses. A SGD must have within its boundaries, as a primary use, a material extraction and materials processing operation that is designed to extract or process soil, sand, gravel or clay. This district is designed to protect the environmental character of a site and to promote compatible development with adjacent land uses and future redevelopment of the site. SGD is a zoning classification that is intended to create a controlled environment for materials extraction and processing related directly to sand or gravel pits. (Ord. No. 253, §1 (art. X, §1), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-302. Permitted uses.

Within a SGD only those uses directly related to the operation of the material extraction process shall be allowed. Such related uses are limited to the extraction, processing, storage, production of finished products, and shipment of such materials and products from within the property, and are specifically limited to the following:

- (1) Testing for, or extraction of, raw materials such as sand, soil, clay, gravel, or other similar materials that are mined or removed without the use of blasting or explosives.
- (2) The processing and handling of extracted materials including, without limitation, loading, screening, washing, sorting, stockpiling, and distribution by rolling equipment or conveyor systems.
- (3) Production of materials and finished products through processing plants, including, without limitation, concrete, bulk or bagged sand, soil, clay and/or gravel.
- (4) Warehousing and storage of bulk or bagged sand, soil, clay, cement and/or gravel as well as exterior storage of sand, soil, clay and gravel in bulk form.
- (5) Laboratory, weighing, and testing facilities for conducting test and chemical analysis of materials.
- (6) The administrative activities associated with such uses including, without limitation, offices and associated uses.
- (7) Outside storage of equipment, spare parts and supplies to be used at the site; provided that such storage is screened from public view by natural buffers, screening or fencing.
- (8) No storage of fuel, flammable, or explosive materials shall be permitted.
- (9) Transportation related uses including, but not limited to, the use of trucking and railroad vehicles for transporting materials and product to and from the SGD. This would include

maintenance and storage of the equipment and vehicles utilized by the sand or gravel pit operator, provided such storage is screened from public view by natural buffers, screening or fencing.

(Ord. No. 253, §1 (art. X, §2), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-303. Operating standards.

It is the intent of these regulations to allow the existence of sand, soil, clay and/or gravel extraction and processing in a manner which is sensitive to surrounding land uses and cognizant of the concerns of neighborhood and environmental interest with respect to protecting water quality, quality of life and ensuring protection of the environment. As such, the following operating standards are established to allow sand or gravel pit operations located within a SGD to be carried out in a manner that is compatible with surrounding land uses. All extraction, processing, and related operations performed in a SGD shall be done and shall operate in conformance with the standards set forth in each applicable subsection below.

- (1) *Frontage requirements.* All property within a SGD shall have a minimum of 60 feet of frontage on at least one adjacent public right-of-way or recorded easement at least 60 feet in width, which provides ingress or egress to public roads. Regardless of the frontage provided onto a public road, a SGD shall comply with the provisions of subsection (7) (clear vision and queuing).
- (2) *Natural buffer.* A natural area shall be maintained around the perimeter of the property within the district and no grading, removal, or disturbance of native plant material shall be allowed within 500 feet of any perimeter property line of the property within the district or public right-of-way except as required for establishing fencing and berming as provided for herein and for providing a 20-foot-wide access road for the purpose of establishing and maintaining fencing, landscaping, access and/or security patrol.
- (3) *Screening requirements.* Notwithstanding subsection (2) above, greater visual screening is required at any point where the extraction is located within 1,000 feet of a public right-of-way carrying pedestrian or vehicular traffic. In such areas, the visual screen shall not be less than eight feet in height at or near the property line and shall be made up of any combination of the following materials: existing native plant materials, supplementary plant materials, existing grading, berming, and/or fencing.
- (4) *Fencing requirements.* A fence shall be provided around the perimeter of the property or not less than 25 feet from the outer edge of any excavation that is ten feet or greater in depth. Such fence shall be a minimum of eight feet in height and a maximum of 12 feet in height and shall be constructed of visually screening material.
- (5) *Excavation setbacks.* No excavation or extraction of material (other than is required for the installation and maintenance of fences, landscape screen, access points, crossings, or clear vision zones at entry points) shall be allowed closer than 500 feet from the property line of the SGD district or closer than 500 feet from any public right-of-way.
- (6) *Facility setbacks.* All facilities for the production of excavated and processed products shall be located at least 500 feet from the property line of any adjoining property that is developed and/or zoned for residential use and at least 50 feet from any public right-of-way on which pedestrian or vehicular access is allowed.

- (7) *Clear vision and queuing requirements.* A triangular clear vision zone shall be provided on the subject property at the intersection of all access points with public roads to provide an area of clear vision of vehicles. The zone shall be defined by a triangle consisting of 200 feet parallel with the public road and 50 feet along the access road or drive measured from the intersection point of the two right-of-ways. A queuing area accommodating four trucks of no less than 2,400 square feet shall be provided between the edge of the public right-of-way and the access point or gate station, whichever is nearest the public right-of-way.
- (8) *Pit walls and slopes.* All walls of the pit or excavated areas shall be maintained in compliance with applicable state and federal safety requirements.
- (9) *Floodplain protection.* No building may be placed within 150 feet from the outer limit of a 100-year floodplain. All NPDES and TNRCC requirements must be met any time the quarry operations come within 150 feet of a 100-year floodplain to prohibit silt or sediment from entering the creek or stream. This restriction would not apply in any case where the floodplain is located more than 150 feet inside the property line of the SGD.
- (10) *Industrial waste monitoring.* Upon request by the city, any person operating an activity within a SGD shall provide, to the city's satisfaction, documentation evidencing the characterization, handling, and disposal of any industrial waste generated within the SGD. Documentation which may satisfy the characterization inquiry includes process knowledge literature and/or waste analysis records.
- (11) *Material safety data.* Upon request by the city, independent of the Federal Community Right to Know and Emergency Planning Act, any person operating an activity within a SGD shall provide copies of Material Safety Data Sheets (MSDS) for materials maintained, stored, or used within the SGD. The materials subject to this section are those materials whose properties for volatility, flammability, explosive potential, corrosiveness, radioactivity, or other toxic or hazardous property allow them to be listed in the North American Emergency Response Guidebook, current edition and as amended.

(Ord. No. 253, §1 (art. X, §3), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-304. Identification of boundaries and surrounding uses; ERZD environmental assessment report.

Not less than 30 days prior to the submission of a zoning case to the Planning and Zoning Commission for obtaining SGD zoning on a property, eight copies of a boundary map and metes and bounds description shall be provided by the applicant showing the outer perimeter line of the property that is owned, leased, under contract, or optioned by the operator and which the operation is to utilize. This boundary description and drawing shall be submitted to the city secretary and shall be considered the official boundary description on which the SGD will be established and within which the permitted uses allowed in the district will be allowed. All setbacks and distance requirements shall be measured from the boundary lines identified on the boundary map provided under this section. If the applicant is not the owner of the property the applicant shall provide written authorization to act as agent on behalf of the owner. (Ord. No. 253, §1 (art. X, §4), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-305. Site plan.

Eight copies of a site plan shall be submitted at the time any property owner initiates a zoning case by filing a zoning application requesting the establishment of a SGD. The site plan shall be submitted to the city secretary and shall graphically depict, to scale, the location and size of all then-existing permanent and affixed structures, buildings, and facilities in relation to the boundaries of the property. The site plan shall also illustrate the location of all then-existing access points and their relationship to adjoining or crossing major thoroughfares. The information required by this section may be incorporated into the boundary map required by section 98-304, and an aerial photo may be used as the base document for the site plan. (Ord. No. 253, §1 (art. X, §5), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-306. Signs.

- (a) Signs surrounding or within a SGD may be used to provide the following:
 - (1) To identify the extraction or manufacturing operation;
 - (2) To inform customers of the facility with respect to access points and the existence of the facility;
 - (3) To identify the occupants or operations within a specific building or area of the district; and
 - (4) To provide directional, safety, and other information to the general public, occupants, employees, patrons, and visitors to the district.
- (b) Signs within a SGD shall be in conformity with chapter 66 to the extent those regulations apply.
- (c) Signs shall be posted at all exit points from a permitted SGD to a public road that reminds truckers that their loads must be covered in accordance with city and state regulations that impose fines if violated.

(Ord. No. 253, §1 (art. X, §6), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-307. Blasting.

No blasting or use of any explosive shall be permitted within a SGD. (Ord. No. 253, §1 (art. X, §7), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-308. Asphaltic concrete production.

No asphaltic concrete plant activity may be conducted, and no storage of asphalt materials may occur for purposes of batching or producing asphaltic or any other purpose concrete, within a SGD. (Ord. No. 253, §1 (art. X, §8), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-309. Continuation of existing uses.

Any use such as livestock grazing, ranching operations, barns, or farm operations that would be a continuing use that was non-conforming as a result of the establishment of the SGD may continue. (Ord. No. 253, §1 (art. X, §9), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-310. Redevelopment after termination of use.

After the sand and gravel and related uses have terminated within a SGD, the property shall not be redeveloped for any purpose until a beneficial reuse concept plan (BRCP) has been prepared and submitted in accordance with the regulations of chapter 54 and a new permanent base zoning district has been applied for and received through the required public process, including, at a minimum, one or more public hearings before the Planning and Zoning Commission and the City Council. (Ord. No. 253, §1 (art. X, §10), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Secs. 98-311 - 98-330. Reserved.

DIVISION 3. QUARRY DISTRICT (QD)

Sec. 98-331. Established; purpose.

- (a) The quarry district (QD) is a special zoning district intended to allow for a quarry and related uses for the extraction of limestone and other raw materials and the processing of those materials into finished products. A QD must have within its boundaries, as a primary use, a material extraction and materials processing operation that is designed to extract limestone or any other similar materials which are mined on the property and/or which are processed on the property subsequent to mining. This district is designed to protect the environment and promote compatible land use relationships with adjoining properties and to allow for the safe development of commercial quarrying, cement, concrete products and lime manufacturing, and related industries, together with accessory support facilities that relate directly to the on-site quarrying, processing, and manufacturing operations. The district is specifically created in order to classify such materials extraction, processing and related uses in a district zoning category that expressly encompasses such uses, as opposed to the other ordinary districts within the permitted uses table, which do not specifically embody, collectively, such uses. Quarry district (QD) is a zoning classification that is intended to allow for a broad range of directly related uses that would create a controlled environment for the development of diverse material extraction and processing activities, including by way of example, but without limitation, mining, blasting, extraction, processing, handling, crushing, washing, screening, sorting, stockpiling, and the production, packaging, distribution, and transportation of aggregate, ready-mix concrete, asphaltic concrete, lime and hydrated lime, cement, concrete, precast and prestressed concrete products, Portland cement, concrete pipe, concrete blocks, and other concrete products within the district, including activities required for the support of such directly related operations, including but not limited to vehicle and rail maintenance facilities, office and dispatch facilities, outside storage of materials, and other operations incidental to quarry operations.

- (b) Quarry district (QD) use regulations and operating standards set forth in this division shall apply to all quarry and related processing uses within a QD district.

(Ord. No. 253, §1 (art. X, §11), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-332. Permitted uses.

Within the district no building, structure, or land shall be used for any purpose other than the following, or any combination thereof, provided that such uses take place within the site specific boundaries of the district designated as QD, or on which said activities are otherwise designated by law, in accordance with the operating standards for this zoning district:

- (1) Testing for or extraction of raw materials such as limestone or other similar materials that are mined or removed without the use of blasting or explosives (or using blasting or explosives if approved under section 98-337).
- (2) The processing and handling of extracted materials including, without limitation, loading, primary and secondary crushing, screening, washing, sorting, stockpiling, and distribution by rolling equipment or conveyor systems.
- (3) Production of materials and finished product through processing plants, including but not limited to cement plants, lime plants, ready-mix concrete plants, concrete batch plants, asphaltic concrete plants, pug mills and production facilities for precast and prestressed concrete, concrete blocks, packaged cement, packaged concrete, and concrete pipe.
- (4) Rail, vehicle and equipment maintenance facilities.
- (5) Warehousing and distribution facilities for finished products and raw materials such as mined aggregate, and raw cement in various stages of production (i.e., cement powder, clinker, gypsum, etc.).
- (6) Laboratory, weighing, and testing facilities for conducting tests and chemical analyses of materials.
- (7) The administrative activities associated with such uses including, without limitation, offices and associated uses.
- (8) Outside storage of materials equipment, spare parts and supplies to be used at the site; provided that such storage is screened from public view by natural buffers, screening or fencing.
- (9) Transportation related uses including, but not limited to, the use of equipment, and trucking and railroad vehicles for transporting quarry materials and product to and from the particular site(s). This would include maintenance and storage of the equipment, and trucking and/or railroad vehicles utilized by the operator of the QD, providing such storage is screened from public view by natural buffers, screening or fencing.
- (10) No on-site storage of ammonium nitrate or fuel shall be permitted.

(Ord. No. 253, §1 (art. X, §12), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-333. Operating standards.

It is the intent of these regulations to allow the existence of quarrying and processing operations which are sensitive to surrounding land uses and cognizant of the concerns of neighborhood interest and environmental interest with respect to protecting quality of life and ensuring protection of the environment. As such, the following operating standards are established to allow the quarry and processing operations to be carried out in a manner that is as compatible as possible with the surrounding land uses. All quarrying, processing, and related operations performed in a QD shall be done and shall operate in conformance with the standards set forth in each applicable subsection below.

- (1) *Frontage requirements.* All property within a QD shall have a minimum of 60 feet of frontage on an adjacent public right-of-way or recorded easement, at least 60 feet in width, which provides ingress or egress to public roads. Regardless of the frontage provided onto a public road a district shall comply with the provisions of subsection (7) (clear vision and queuing).
- (2) *Natural buffer.* A natural area shall be maintained around the perimeter of the property within the district and no grading, removal, or disturbance of native plant material shall be allowed within 500 feet of any perimeter property line of the property within the district or public right-of-way except as required for establishing required berms and fencing and for a 20-foot-wide access road for the purpose of establishing and maintaining fencing, landscaping, access and/or security patrol.
- (3) *Screening requirements.* Notwithstanding subsection (2) above, visual screening is required at any point where the active quarry pit is located within 1,000 feet of a public right-of-way carrying pedestrian or vehicular traffic. The visual screen in such areas shall not be less than 30 feet in height at or near the property line and shall be made up of a vegetated berm.
- (4) *Fencing requirements.* A fence shall be provided around the perimeter of the property or not less than 25 feet from the outer edge of any excavation that is ten feet or greater in depth and shall be a minimum of eight feet in height and a maximum of 12 feet in height. Such fence shall be constructed of visually screening material.
- (5) *Excavation setbacks.* No excavation or extraction of material, other than is required for the installation and maintenance of fences, landscape screen, access points, crossings, or clear vision zones at entry points, shall be permitted closer than 950 feet from the property line of any adjoining property zoned for residential use or closer than 950 feet from any public right-of-way.
- (6) *Facility setbacks.* All facilities for the production of finished products that are made from excavated materials (i.e., ready-mix concrete batch plants, lime plants, cement plants, concrete block plants, cement packaging plants, precast and prestressed yards, concrete pipe plants, and other similar facilities) shall be located at least 950 feet from the property line of any adjoining property that is developed and/or zoned for residential use and at least 950 feet from any public right-of-way on which pedestrian or vehicular access is allowed.
- (7) *Clear vision and queuing requirements.* A triangular clear vision zone shall be provided at the intersection of all access points with public roads to provide an area of clear vision for vehicles. The zone shall be defined by a triangle consisting of 200 feet parallel with

- the public road and 50 feet along the access road or drive measured from the intersection point of the two right-of-ways. A queuing area sufficient to accommodate four or more trucks of no less than 2,400 square feet shall be provided between the edge of the public right-of-way and the access point or gate station, whichever is nearest the public right-of-way.
- (8) *Floodplain protection.* No building may be placed within 150 feet from the outer limit of a 100-year floodplain. All NPDES and TNRCC requirements must be met any time the quarry operations come within 150 feet of a 100-year floodplain to prohibit silt or sediment from entering the creek or stream. This restriction would not apply in any case where the floodplain is located more than 150 feet inside the property line of the QD.
 - (9) *Water quality protection.* Operations within a QD shall comply with applicable water quality standards set forth by the Texas Natural Resource Conservation Commission and all applicable federal and state laws, rules and regulations.
 - (10) *Industrial waste monitoring.* Upon request of the city, any person operating an activity within a QD shall provide, to the requesting agency's satisfaction, documentation evidencing the characterization, handling, and disposal of any industrial waste generated within the QD. Documentation which may satisfy the characterization inquiry includes process knowledge literature and/or waste analysis records.
 - (11) *Material safety data.* Upon request of the city, independent of the Federal Community Right to Know and Emergency Planning Act, any person operating an activity within a QD shall provide copies of Material Safety Data Sheets (MSDS) for material maintained, stored, or used within the QD. The materials subject to this section are those materials whose properties for volatility, flammability, explosive potential, corrosiveness, radioactivity, or other toxic or hazardous property allow them to be listed in the North American Emergency Response Guidebook, current edition and as amended.
 - (12) *Blasting setback.* Blasting shall not be allowed within 1,000 feet of a residential structure under construction or completed at the time the QD is established.

(Ord. No. 253, §1 (art. X, §13), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-334. Identification of boundaries and surrounding uses.

Not less than 30 days prior to the submission of a zoning case to the Planning and Zoning Commission for obtaining quarry district (QD) zoning on a property, eight copies of a boundary map and metes and bounds description shall be provided by the applicant showing the outer perimeter line of the property that is owned, leased, under contract, or optioned by the operator and which the operation is to utilize. This boundary description and drawing shall be submitted to the city and shall be considered the official boundary description on which the quarry district will be established and within which the permitted uses in the QD will be allowed. All setbacks and distance requirements shall be measured from the boundary lines identified on the boundary map provided under this section. If the applicant is not the owner of the property the applicant shall provide a written authorization to act as agent on behalf of the owner. (Ord. No. 253, §1 (art. X, §14), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-335. Site plan.

Eight copies of a site plan shall be submitted at the time any property owner initiates a zoning case by filing a zoning application requesting the establishment of a QD. The site plan shall be submitted to the city and shall graphically depict, to scale, the location and size of all permanent and affixed structures, buildings, and facilities in existence at the time of submission in relation to the boundaries of the property. The site plan shall also illustrate the location of all access points and their relationship to adjoining or crossing major thoroughfares. The information required by this section may be incorporated into the boundary map required by section 98-334 and an aerial photo may be used as the base document for the site plan. (Ord. No. 253, §1 (art. X, §15), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-336. Signs.

- (a) Signs surrounding or within a quarry district (QD) may be used to provide the following:
 - (1) To identify the quarrying or manufacturing operations located within the district;
 - (2) To inform customers of the quarry facility with respect to access points and the existence of the facility;
 - (3) To identify the occupants or operations within a specific building or area of the district; and
 - (4) To provide directional, safety, and other information to the general public, occupants, employees, patrons, and visitors to the district.
- (b) Signs within a QD shall be in conformity with chapter 66, to the extent those regulations apply.
- (c) Signs shall be posted at all exit points from a permitted QD to a public road that reminds truckers that their loads must be covered in accordance with city and state regulations that impose fines if violated.

(Ord. No. 253, §1 (art. X, §16), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-337. Blasting.

- (a) No blasting or use of explosives shall be permitted within a QD unless a specific City Council approval use permit, for such activity, is granted within the QD. The issuance of a specific City Council approval use permit is subject to the applicable provisions of this Code; provided, however, the city shall set a date of expiration for the permit. If such approval is granted, blasting may be used within the boundaries of the QD provided such use complies with the applicable requirements of the Unified Fire Code, or the International Fire Code as amended and adopted by the City Council.
- (b) A minimum buffer zone of 1,000 feet shall be maintained between the blasting area and the nearest residence and shall be screened by a minimum 30-foot vegetated berm.
- (c) Blasting shall be permitted only during the following time periods:
 - (1) Monday through Friday (no Saturdays, Sundays, or legal holidays).
 - (2) 80 percent between the hours of 3:00 p.m. and 5:00 p.m.
 - (3) 20 percent between the hours of 10:00 a.m. and 11:00 a.m.

- (d) Crushing operations shall be permitted only during the following time periods:
 - (1) Monday through Saturday (no Sundays or legal holidays).
 - (2) 8:00 a.m. to 5:00 p.m.
- (e) Ground vibration shall be limited to a maximum of 0.28 PPV (peak particle velocity) as measured at 3,000 feet from the quarry property line or the nearest residence, whichever is closest.
- (f) Air overpressure (air shock) shall not exceed 127 dB (decibels).

(Ord. No. 253, §1 (art. X, §17), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-338. Asphaltic concrete production.

No asphaltic concrete production plants or storage of asphalt materials may be utilized within a QD unless a specific City Council approval use permit for such activity is granted within the QD. The issuance of a specific City Council approval use permit is subject to the applicable provisions of this Code; provided, however, the city shall set a date of expiration for the permit. If such approval is granted, asphaltic concrete production may occur within the boundaries of a QD provided such use complies with the applicable requirements of the TNRCC, the EPA, and of this chapter. (Ord. No. 253, §1 (art. X, §18), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-339. Redevelopment after termination of use.

After the quarry and related uses have terminated within a QD, the property shall not be redeveloped for any purpose until a beneficial reuse concept plan (BRCP) has been prepared and submitted in accordance with the regulations of chapter 54 and a new permanent base zoning district has been applied for and received through the required public process including, at a minimum, one or more public hearings before the Planning and Zoning Commission and the City Council. (Ord. No. 253, §1 (art. X, §19), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-340. Continuation of existing uses.

Any use such as livestock grazing, ranching operations, or farm operations that would be a continuing use that was non-conforming as a result of the establishment of the QD may continue. (Ord. No. 253, §1 (art. X, §20), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Secs. 98-341 - 98-360. Reserved.

ARTICLE XI. TELECOMMUNICATION FACILITIES

Sec. 98-361. Purpose.

The provisions of this article are intended to ensure that telecommunication facilities are located, installed, maintained and removed in a manner that:

- (1) Minimizes the number of transmission towers throughout the community;
- (2) Encourages the collocation of telecommunication facilities;

- (3) Encourages the use of existing buildings, light or utility poles or water towers as opposed to construction of new telecommunication towers;
- (4) Recognizes the need of telecommunication providers to build out their systems over time; and
- (5) Ensures that all telecommunication facilities, including towers, antennae, and ancillary facilities, are located and designed to minimize the visual impact on the immediate surroundings and throughout the community, and minimize public inconvenience and disruption. Nothing in this section shall apply to amateur radio antennae.

(Ord. No. 253, §1 (art. XI, §1), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-362. Definitions.

As used in this article, the following words and phrases mean:

Ancillary facilities means the buildings, cabinets, vaults, enclosures and equipment required for operation of telecommunication systems including but not limited to repeaters, equipment housing, and ventilation and other mechanical equipment.

Antenna means an electrical conductor or group of electrical conductors that transmit or receive radio waves, excluding amateur radio antennae.

Attachment means an antenna or other piece of related equipment affixed to a transmission tower, building, light or utility pole, or water tower.

Collocation means placement of an antenna on an existing transmission tower, building, light or utility pole or water tower where the antenna and all supports are located on the existing structure.

Provider means a person in the business of designing and using telecommunication facilities including cellular radiotelephones, personal communications services, enhanced/specialized mobile radios, and commercial paging services.

Specific City Council use permit means a permit that is required for a use that may be permitted by the City Council pursuant to the methodology prescribed in article V of this chapter (Specific City Council Approved Use Permit).

Stealth design means a telecommunication facility that is designed or located in such a way that the facility is not readily recognizable as telecommunications equipment.

Telecommunication facility means a facility designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various wireless communication devices including transmission towers, antennae and ancillary facilities. For purposes of this article, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "telecommunication facilities."

Transmission tower means the monopole or lattice framework designed to support transmitting and receiving antennae. For purposes of this article, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "transmission towers." Transmission towers include:

- (1) *Guyed tower.* A tower which is supported by the use of cable (guy wires) which are permanently anchored.
- (2) *Lattice tower.* A tower characterized by an open framework of lateral cross members which stabilize the tower.

- (3) *Monopole.* A single upright pole, engineered to be self supporting and does not require lateral cross supports or guys.

(Ord. No. 253, §1 (art. XI, §2), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-363. Siting restricted.

No telecommunication facility, as defined in section 98-362, may be constructed, modified to increase its height, installed or otherwise located within the city except as provided in this article. Depending on the type and location of the telecommunication facility, the telecommunication facility shall be either an outright permitted use or require a specific City Council use permit.

- (1) *Prohibited in residential districts.* The siting of a telecommunication facility is prohibited in any residential district (PD, R-1, R-2 and R-3) within the city.
- (2) *Specific City Council use permit.* As provided herein, siting of a telecommunication facility may be permitted in specified zoning districts by the City Council pursuant to the methodology prescribed in article V of this chapter (Specific City Council Approved Use Permit) as well as provisions of this article. Should a conflict arise between the specific City Council use permit process and the requirements of this article, the requirements of this article shall prevail.
- (3) *Outright permitted uses.* As provided herein, the siting of a telecommunication facility may be permitted as a matter of right in specified zoning districts subject only to the requirements of obtaining site review approval and a building permit or permits.
- (4) *Site review.* The Planning and Zoning Commission shall perform all site reviews required by sections 98-364 through 98-366. No building permit shall be issued prior to completion of the site review process, including any appeals to the City Council. (Ord. No. 361, §1, 6-26-2009)

(Ord. No. 253, §1 (art. XI, §3), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-364. Collocation of additional antennae on existing transmission tower.

- (a) *Permitted use.* Collocation of an additional antenna on an existing transmission tower shall be considered an outright permitted use in B-3, B-4 or I-1 zoning districts.
- (b) *Specific City Council use permit.* In B-1 and B-2 districts such collocation shall require a specific City Council use permit. No exceptions to the standards contained herein shall be permitted except as authorized by section 98-370.
- (c) *Prohibited zoning districts and locations.* No transmission tower shall be permitted in any residential zoning district (PD, R-1, R-2, and R-3).
- (d) *Site review.* Such collocation on an existing transmission tower shall be subject to site review approval provided that the antennae and ancillary facilities comply with the standards contained herein.

(Ord. No. 253, §1 (art. XI, §4), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-365. Collocation of antennae on existing buildings, light or utility poles, and water tower.

In addition to collocation on a transmission tower, an antenna may be collocated on existing buildings, light or utility poles, and water towers.

- (1) *Permitted use.* In B-3, B-4, or I-1 districts collocation on a building, light or utility pole, or water tower, shall be considered an outright permitted use provided that the antennae and ancillary facilities comply with the standards and requirements contained herein.
- (2) *Specific City Council use permit.* In B-1 and B-2 districts such collocation shall require a specific City Council use permit. No exceptions to the standards contained herein shall be permitted except as authorized by section 98-370.
- (3) *Prohibited zoning districts and locations.* No collocation of antennae shall be permitted in any residential zoning district (PD, R-1, R-2, and R-3).
- (4) *Site review.* Such collocation on a building, light or utility pole, or water tower shall be subject to site review approval provided that the antennae and ancillary facilities comply with the standards contained herein, and the color of the antennae blends in with the existing structure and surroundings.

(Ord. No. 253, §1 (art. XI, §5), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-366. Construction of transmission towers.

Construction of a transmission tower, or a modification of an existing transmission tower to increase its height, shall be allowed as follows:

- (1) Permitted use.
 - a. Such construction or modification shall be considered an outright permitted use in the I-1 zoning district.
 - b. Modification to increase the height of an existing transmission tower shall be considered an outright permitted use in all other districts if the city approved an increase in the tower height, by the specific City Council use permit authorizing the transmission tower. The increase in height allowed under this paragraph (1) shall be limited to the specific height authorized by the specific City Council use permit.
- (2) *Specific City Council use permit.* In all cases other than those listed in subsection (1), above, such construction or modification shall require a specific City Council use permit. No exceptions to the standards contained herein shall be permitted except as authorized by section 98-370.
- (3) *Prohibited zoning districts and locations.* No new transmission tower shall be permitted in any residential zoning district (PD, R-1, R-2, and R-3).
- (4) *Site review.* Such construction or modification shall be subject to site review approval provided that the antennae and ancillary facilities comply with the standards contained herein, and the color of the antennae blends in with the existing structure and surroundings.

(Ord. No. 253, §1 (art. XI, §6), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-367. Application requirements.

- (a) *Collocation of antennae.* In addition to standard required application material, an applicant for collocation of antennae shall submit the following information. Note: Additional application material is required, as specified in subsection (c) below, for applications requiring a site review or specific City Council use permit.
- (1) A description of the proposed antennae location, design and height.
 - (2) Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC) particularly with respect to any habitable areas within the structure on which the antennae are co-locating on or in structures directly across from or adjacent to the antennae.
 - (3) A statement documenting that placement of the antennae is designed to allow future collocation of additional antennae if technologically possible.
 - (4) Documentation that the ancillary facilities will not produce sound levels in excess of those standards specified in section 98-368, or designs showing how the sound is to be effectively muffled and reduced pursuant to those standards.
 - (5) Plans showing the connection to utilities/right-of-way cuts required, ownership of utilities and easements required.
 - (6) Documents demonstrating that necessary easements have been obtained.
 - (7) Plans demonstrating how vehicular access will be provided.
 - (8) Signature of the property owner(s) on the application form or a statement from the property owner(s) granting authorization to proceed with building permit and land use processes.
 - (9) If ancillary facilities will be located on the ground, a landscape plan drawn to scale indicating proposed and existing landscaping, including type, spacing, size and irrigation methods.
 - (10) Documents demonstrating that the FAA has reviewed and approved the proposal. Alternatively, when a site review or specific City Council use permit is required, submit a statement documenting that notice of the proposal has been submitted to the FAA. The site review or specific City Council use permit may proceed and approval may be granted for the proposal as submitted, subject to FAA approval. If FAA approval requires any changes to the proposal as initially approved, then that initial approval shall be void. A new application will need to be submitted, reviewed and approved through an additional site review or specific City Council use permit. No building permit application shall be submitted without documents demonstrating FAA review.
- (b) *Construction of transmission tower.* In addition to standard required application materials, an applicant for a transmission tower shall submit the following information. Note: Additional application material is required, as specified in subsection (c) below, for applications requiring a site review or specific City Council use permit.
- (1) A description of the proposed tower location, design and height.
 - (2) The general capacity of the tower in terms of the number and type of antennae it is designed to accommodate.

- (3) Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC).
 - (4) A signed agreement, as supplied by the city, stating that the applicant will allow collocation with other users, provided all safety, structural, and technological requirements are met. This agreement shall also state that any future owners or operators will allow collocation on the tower.
 - (5) Documentation that the ancillary facilities will not produce sound levels in excess of those standards specified in section 98-368, or designs showing how the sound is to be effectively muffled and reduced pursuant to those standards.
 - (6) A landscape plan drawn to scale showing proposed and existing landscaping, including type, spacing, size and irrigation methods.
 - (7) Plans showing the connection to utilities/right-of-way cuts required, ownership of utilities and easements required.
 - (8) Documents demonstrating that necessary easements have been obtained.
 - (9) Plans demonstrating how vehicular access to be provided.
 - (10) Signature of the property owner(s) on the application form or a statement from the property owner(s) granting authorization to proceed with building permit and land use processes.
 - (11) Documents demonstrating that the FAA has reviewed and approved the proposal. Alternatively, when a site review or specific City Council use permit is required, submit a statement documenting that notice of the proposal has been submitted to the FAA. The site review or specific City Council use permit may proceed and approval may be granted for the proposal as submitted, subject to FAA approval. If FAA approval requires any changes to the proposal as initially approved, then that initial approval shall be void. A new application will need to be submitted, reviewed and approved through an additional site review or specific City Council use permit. No building permit application shall be submitted without documents demonstrating FAA review.
- (c) *Site review and specific City Council use permit applications.* In addition to the application requirements specified in subsections (a) and (b) above, application for site review or specific City Council use permits also shall include the following information:
- (1) A visual study containing, at a minimum, a graphic simulation showing the appearance of the proposed tower, antennae, and ancillary facilities from at least five points within a three-mile radius. Such points shall be chosen by the provider with review and approval by the planning director to ensure that various potential view are represented.
 - (2) Evidence demonstrating collocation is impractical on existing tall buildings, light or utility poles, water towers, existing transmission towers, and existing tower facility sites for reasons of structural support capabilities, safety, available space, or failing to meet service coverage areas needs.
 - (3) A current overall system plan for the city, showing facilities presently constructed or approved and future expansion plans.
 - (4) A statement providing the reasons for the location, design and height of the proposed tower or antennae.

(Ord. No. 253, §1 (art. XI, §7), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-368. Standards for transmission towers and antennae.

Installation, construction or modification of all transmission towers and antennae shall comply with the following standards, unless a variance is obtained pursuant to the provisions of section 98-370:

- (1) *Separation between transmission towers.* No transmission tower may be constructed within 2,000 feet of any pre-existing transmission tower. Tower separation shall be measured by following a straight line from the portion of the base of the proposed tower that is closest to the base of any pre-existing tower. For purposes of this subsection, a tower shall include any transmission tower for which the city has issued a building permit, or for which an application has been filed and not denied.
- (2) *Height limitation.* Transmission tower heights shall not exceed 199 feet. In no case shall a variance from this height limitation be granted.
- (3) *Collocation.* New transmission towers shall be designed to accommodate collocation of additional providers:
 - a. New transmission towers of a height of 80 feet or more shall be designed to accommodate collocation of a minimum of two additional providers either outright or through future modification to the tower.
 - b. New transmission towers of a height of at least 60 feet and no more than 80 feet shall be designed to accommodate collocation of a minimum of one additional provider either outright or through future modification to the tower.
- (4) *Setbacks.* The following setbacks from adjacent property lines and adjacent streets shall be required unless a variance is granted pursuant to the provisions of section 98-370:
 - a. In the I-1 zoning district, the setback from adjacent public streets, private streets or adjacent properties lines shall be minimum of 25 feet.
 - b. In all other zoning districts, transmission towers shall be set back from adjacent public streets, private streets or adjacent property lines a minimum of 50 feet from adjacent public streets.
- (5) *Buffering.* In all zoning districts, existing vegetation shall be preserved to the maximum extent possible. In the I-1 zoning districts, no buffering is required. In all other zoning districts, landscaping shall be placed completely around the transmission tower and ancillary facilities located at ground level except as required to access the facility. Such landscaping shall consist of evergreen vegetation with a minimum planted height of six feet placed densely so as to form a screen. Landscaping shall be compatible with other nearby landscaping and shall be kept healthy and well maintained.
- (6) *Noise reduction.* When the adjacent property is zoned for residential use or occupied by a dwelling, hospital, school, library, or nursing home, noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to 45 dB(A).
- (7) *Lighting.* No lighting shall be permitted on transmission towers except that required by the Federal Aviation Administration.

- (8) *Color.* The transmission tower and attached antennae shall be unpainted galvanized steel or painted neutral colors or such shades as are appropriate and compatible with the surrounding environment, as approved by the city.
- (9) *Display.* No signs, striping, graphics or other attention getting devices are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a surface area of no more than three square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than two.
- (10) *Spacing of transmission towers from residential structures.* Transmission towers shall be spaced from all residential structures at a minimum equal to 115 percent of the height of the transmission tower, measured from the base of the transmission tower to the nearest residential structure.

(Ord. No. 253, §1 (art. XI, §8), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-369. Standards for ancillary facilities.

All ancillary facilities shall comply with the standards of section 98-368(5) and (6). (Ord. No. 253, §1 (art. XI, §9), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-370. Variances.

- (a) The city may grant a variance from the provisions of section 98-368(1) providing the applicant demonstrates that:
 - (1) It is technologically impossible to locate the proposed tower on available sites more than 2,000 feet from a pre-existing transmission tower and still provide the approximate coverage the tower is intended to provide;
 - (2) The pre-existing transmission tower that is within 2,000 feet of the proposed tower cannot be modified to accommodate another provider; and
 - (3) There are no available buildings, light or utility poles, or water towers on which antennae may be located and still provide the approximate coverage the tower is intended to provide.
- (b) The city may grant a variance to the setbacks of section 98-368(4) upon finding that stealth design, proposed landscaping, configuration of the site, or the presence of mature trees obviates the need for compliance.
- (c) If the proposed transmission tower or ancillary facility requires site review or a specific City Council permit, the request for variance shall be considered as part of the site review or specific City Council use permit process. If the proposed transmission tower or ancillary facility is an outright permitted use, the request for a variance shall be process by the board of adjustment.

(Ord. No. 253, §1 (art. XI, §10), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-371. Removal of facilities.

- (a) All transmission towers and antennae shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner within six months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city administrator may grant a

six-month extension where a written request has been filed, within the initial six-month period, to reuse the tower or antennae.

- (b) The city may require the posting of an open ended bond before building permit issuance to insure removal of the transmission tower, substructure or antennae after the facility no longer is being used.

(Ord. No. 253, §1 (art. XI, §11), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-372. Maintenance of facilities.

Transmission towers, substructures and antennae must be maintained in compliance with the provisions of this article as well as all applicable municipal, state and federal regulations. Specifically, transmission towers, substructures and antennae shall be maintained in a manner that does not place the health, safety or welfare of the citizens of the city in jeopardy; this includes, but is not limited to, the requirement that all required landscaping is maintained in a healthy state, all telecommunication facility components are maintained in a good states of repair, that weathered transmission towers and substructures are repainted as needed and the transmission tower facility is kept free of trash or debris. (Ord. No. 253, §1 (art. XI, §12), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Sec. 98-373. Fees.

- (a) The collocation application review fee shall be as prescribed in the most recent adopted fee schedule passed and approved by the City Council. The fee shall be non-refundable. (Ord. No. 394, §10, 2-12-2009)
- (b) The tower construction application review fee shall be as prescribed in the most recent adopted fee schedule passed and approved by the City Council. The fee shall be non-refundable. (Ord. No. 394, §10, 2-12-2009)
- (c) The fees noted in subsection (a) and (b) above are in addition to any necessary building permit, zoning or City Council use permit fees. Additionally any ordinance, code provision, rule or regulation to the contrary notwithstanding, the city administrator may require, as part of application fees for building or land use permits for telecommunication facilities, an amount sufficient to recover all of the city's costs in retaining consultants to verify statements made in conjunction with the permit application, to the extent that verification requires telecommunications expertise. None of the fees required by this section are subject to refund.

(Ord. No. 253, §1 (art. XI, §13), 4-8-2004; Ord. No. 387, §1, 12-8-2008)

Secs. 98-374 - 98-400. Reserved.

ARTICLE XII. AMENDMENTS, REZONING, AND VARIANCES

Sec. 98-401. Limitation on amendments; initiation of amendments.

- (a) For the purpose of establishing and maintaining sound, stable, and desirable development within the territorial limits of the City, this Chapter shall not be amended except to correct an error in the Chapter, or because of changed or changing conditions in particular areas or in the City

generally, or to rezone an area, extend the boundary of an existing zoning district, or change the regulations and restrictions thereof, all in accordance with the Comprehensive Plan.

- (b) Subject to the limitations of Subsection (a), an amendment to this Chapter may be initiated by:
- (1) The City Council on its own motion;
 - (2) The Planning and Zoning Commission;
 - (3) A petition, as hereafter provided.

(Ord. No. 253, §1 (art. XII, §1), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-402. Authority for changes and amendments.

The City Council, in accordance with applicable State Law, may from time to time amend, supplement, change, modify, or repeal the regulations, standards, and boundaries herein established. In addition, a comprehensive review of the Zoning Code text and map shall be made by the Planning and Zoning Commission for the purpose of keeping the City current with development patterns; innovative methods in zoning; and examining existing land uses and changes in land uses made by developers and builders within the City in order to ascertain where the patterns of development are changing. The Planning and Zoning Commission, at least every three years, shall file a report and recommendation thereon with the Mayor and City Council. The three-year time period shall commence upon the date of the adoption of this Chapter.

(Ord. No. 253, §1 (art. XII, §2), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-403. Application procedure.

For changes to the regulations and/or district map, the procedure shall be as follows:

- (1) *Application form; filing.* Any person, firm, or corporation petitioning for a change in zoning shall do so upon a form titled "Application for Zoning Amendment or Change," provided for such purpose by the Development Services Department and all petitions for changes shall be filed with the Development Services Department, with a copy to the City Secretary. Notice shall also be given to the Development Services Department and the City Secretary if the application for change originates with any member of the City Council or Planning and Zoning Commission.
- (2) *Contents of petition.* All petitions for amendments to this Chapter shall contain at least the following:
 - a. The petitioner's name, address, and interest in the petition, as well as the name, address, and interest of every person having a legal or an equitable interest in the land covered by the petition.
 - b. The nature and effect of the proposed amendment.
 - c. A fully-dimensioned map showing the following:
 1. The land which would be affected by the proposed amendment.
 2. A legal description of such land.
 3. The present zoning classification of the land.

4. The zoning classification of all abutting zoning districts.
 5. All public and private rights-of-way and easements bounding and intersecting the land under consideration.
- d. If the proposed amendment would require a change in the zoning map, the owners of all land within the area to be changed and within 200 feet shall be identified by name and current mailing address.
 - e. The alleged error in this Chapter which would be corrected by the proposed amendment, together with a detailed explanation of such error in the Chapter which is alleged, and detailed reasons as to how the proposed amendment will correct the same.
 - f. The changed or changing condition(s), if any, in the area or in the municipality generally, that makes the proposed amendment reasonably necessary.
 - g. Evidence that the petition is in accordance with the Comprehensive Plan.
 - h. All other circumstances, factors, and reasons which the applicant offers in support of the proposed amendment.

(Ord. No. 253, §1 (art. XII, §3), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-404. Application fees.

- (a) When an application is filed for change of zoning district boundaries or for any change of the Zoning Code or classifications, such application shall be accompanied by the fees in conformance with the City's fee schedule. The fees must be paid by certified or cashier's check, money order, or credit card payment made payable to the City, and be deposited with the Development Services Department at the time the application is filed. In the event such application is disapproved by the Planning and Zoning Commission, the applicant has a right to make a written request for a hearing before the City Council within a 60 calendar-day period immediately following the hearing before the Planning and Zoning Commission.
- (b) No notice of any such application shall be issued and no hearing shall be had before the Planning and Zoning Commission or the City Council until the prescribed fees are paid. The Development Services Department shall keep and preserve an itemized record of all fees received and the disposition thereof.

(Ord. No. 253, §1 (art. XII, §4), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-405. Action by Planning and Zoning Commission.

- (a) Petitions shall be reviewed by the Planning and Zoning Commission at its regularly-scheduled meeting or special meeting, as called by the City Administrator or Chairman of the Planning and Zoning Commission. The Planning and Zoning Commission shall schedule a public hearing providing written notice of proposed change in classification to all owners of real property lying within 200 feet of the property on which the change in classification is proposed. Such notice shall be given not less than ten (10) calendar days before the date for the hearing. Notice may be served by depositing the notice, properly addressed and postage paid, in the City post office. Owners shall be those of record on the last City tax roll.

- (b) If, after review of the application or petition, the majority of the Planning and Zoning Commission agree by roll call vote that:
 - (1) Such requested change is not in keeping with the Comprehensive Plan of the City;
 - (2) There is no error in the original zoning of the property for which a change is requested;
 - (3) There has been no substantial change in the environment of the property for which a change is requested that could warrant a change since its original classification; and/or
 - (4) Granting of the request would create a spot zone where by the property would enjoy a special monopolistic privilege not enjoyed by nearby properties of equal or similar location factors;

the applicant shall be advised in writing by the City Administrator or his/her designee that it is the opinion of the Commission that granting the requested change would not be in keeping with the objectives and proposes of the Comprehensive Plan, the Zoning Code, and/or the district map, and the particular request will not be recommended for amendment or change. The Planning and Zoning Commission will then transmit its recommendations to the City Council for final approval/disapproval.

(Ord. No. 253, §1 (art. XII, §1), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-406. Request for consideration by City Council; action by City Council.

The City Council shall not hold any public hearing or take action on any zoning matter until it has received the final report from the Planning and Zoning Commission.

- (1) If the Planning and Zoning Commission recommendation is for "disapproval" of the proposed change, the applicant has the right to make a written request for City Council consideration of the zoning matter; if, however, the applicant fails to make written request to the City Council within 60 calendar days after the Planning and Zoning Commission hearing the matter shall be terminated.
- (2) If the Planning and Zoning Commission recommends "approval" or the applicant requests City Council consideration, as required above, the City Council shall, at the next regular or special session, as called by the Mayor:
 - a. Set a date for a public hearing before the City Council.
 - b. Cause to be published a notice giving notice to time, date, and place for such hearing in an official newspaper, or a newspaper of general circulation in the City. Notice must be published a minimum of 16 calendar days before date of hearing.
 - c. Hold a public hearing and vote on the matter with a roll call vote.
- (3) If the Planning and Zoning Commission has recommended disapproval of a change of zoning, such amendment shall not become effective except by the affirmative vote of a simple majority of all members of the City Council. If there is a protest against any such change in classification of the zoning district of any property, and such protest is signed by the owner(s) of 20 percent or more either of the area of the lots included in such proposed change or of those within 200 feet, such amendment shall not become effective except by the affirmative vote of three-fourths (3/4 or 4 out of 5 members) of all members of the City Council.

(Ord. No. 253, §1 (art. XII, §6), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-407. Resubmission of petition upon denial.

If a petition for zoning is recommended for "disapproval" by the Planning and Zoning Commission or is "denied" by the City Council, another petition for classification shall not be filed within a period of one year (365 calendar days) from the date of "denial," unless:

- (1) A substantial change in conditions has taken place in the vicinity of the property sought to be rezoned or for which a specific use permit was requested;
- (2) The applicant applying for rezoning seeks different relief; or
- (3) The last final decision denying rezoning was predicated upon fraud, accident, or mistake.

(Ord. No. 253, §1 (art. XII, §7), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Secs. 98-408 - 98-430. Reserved.

ARTICLE XIII. BOARD OF ADJUSTMENT

Sec. 98-431. Established; applicability of State Law.

- (a) A Board of Adjustment of the City is created and established.
- (b) The Board of Adjustment shall be subject to and shall follow the requirements and have the powers set out in V.T.C.A., Local Government Code § 211.008--211.011.

(Ord. No. 253, §1 (art. XIII, §1), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-432. Membership.

- (a) The Board of Adjustment shall consist of five members who are residents of the City, each to be appointed for a term of two years and removable for cause by the City Council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The Board of Adjustment shall also consist of four alternate members, each of whom shall possess equal qualifications and also be duly appointed for two-year terms and be removed for cause in the above manner provided by the City Council, and which designated alternate members of the Board shall serve in the absence of one or more regular members when requested to do so by the City Administrator.
- (b) The City Council will consider for appointment to the Board of Adjustment only those persons who have demonstrated their civic interest, general knowledge of the community, independent judgment, interest in planning and zoning, and availability to prepare for and attend meetings. It is the intent of the City Council that members shall, by reason of diversity of their individual occupations, constitute a Board of Adjustment which is broadly representative of the City.
- (c) The term of all members shall run in conjunction with the Mayor's term. Members shall be appointed and/or reappointed the first City Council meeting in June following the election of the Mayor in May. The members of the Board of Adjustment shall be identified by place numbers 1 through 5 and the alternate members of the Board of Adjustment shall be identified by place numbers 1a through 4a. Members and alternate members may be appointed to succeed

themselves, and all members and alternate members of the Board shall remain in office after the expiration of their term until City Council appoints individuals to fill said positions. Duly appointed members shall be installed at the first regular meeting after their appointment.

(Ord. No. 253, §1 (art. XIII, §2), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-433. Meetings; election of officers; rules of procedure.

The Board of Adjustment shall elect a Chairman and a Vice-chairman from among its members before proceeding to any other matters of business at the first called meeting of each year. The Board of Adjustment shall select a Secretary and such other officers as it deems necessary either from its membership or from staff representatives assigned by the City Administrator of the City to work with the Board of Adjustment. The Board of Adjustment shall meet the second Monday of every month and shall designate the time and place of its meetings. Meetings of the Board shall be held as called by the City Administrator or Chairman and at such other times as the Board may determine. The Board Chairman, or, in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall adopt its own rules of procedure, subject to the approval of the City Council, and keep a record of its proceedings consistent with provisions of this Chapter and the requirements of State Law.

(Ord. No. 253, §1 (art. XIII, §3), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-434. Jurisdiction; powers.

- (a) *Jurisdiction.* When, in its judgment, the public convenience and welfare will be substantially served and the appropriate use of neighboring property will not be substantially or permanently injured, the Board of Adjustment may, in specific cases after public notice and public hearing, and subject to appropriate conditions and safeguards, authorize and shall have the power to grant the following special exceptions to the regulations herein established. In granting such exceptions and regulations, the Board of Adjustment shall not permit within any district a use that is not permitted in that district and the district regulations as set forth in this Chapter. **The Board of Adjustment shall not permit any variations or exceptions if the applicant has contributed to the cause of the unnecessary hardship of which he complains.**
- (b) Powers.
 - (1) The reconstruction of a building occupied by a nonconforming use, provided such reconstruction does not prevent the eventual return of such property to a conforming use.
 - (2) Modifications of yard, open space, parking lot area or lot width regulations as may be necessary to secure appropriate development of a parcel of land where such parcel was separately owned at the time of the passage of this Chapter and is of such restricted area where the shape of the lot is such that it cannot be appropriately developed without such modification.

- (3) Reduce required off-street parking if it can be shown that the required minimum, as herein established, will not at any time be necessary because of the character of the proposed uses, and the probable limited quantity of employees, clients, customers or tenants.
- (4) Decide appeals where it is alleged there is error in the order, requirement, decision, or determination made by the Building Official or administrative officer in the enforcement of this Chapter.
- (5) Special exceptions to the terms of the Chapter upon which such Board is required to pass pursuant to this Chapter.
- (6) Decide matters specifically delegated to it by the City Council under appropriate standard set by the City Council.
- (7) Upon appeal in specific cases, such variance from the terms of this Chapter will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Chapter will result in unnecessary hardship, and so that the spirit of this Chapter shall be observed and substantial justice done.
- (8) The concurring vote of 75 percent of the members of the Board (4 out of 5 Board members) is necessary to:
 - a. reverse an order, requirement, decision, or determination of an administrative official;
 - b. decide in favor of an applicant on a matter on which the Board is required to pass under the Zoning Code; or
 - c. authorize a variation from the terms of the Zoning Code.

(Ord. No. 253, §1 (art. XIII, §4), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-435. Application for special exception.

- (a) All applications for special exceptions shall be in the form of an appeal to the Board of Adjustment.
- (b) *Application form; filing.* Appeals to the Board of Adjustment may be made by any person aggrieved, or by any officer, department, board, or bureau of the City affected by any decision of the administrative officer. Such appeal shall be made by the aggrieved person by filing, within 30 calendar days of the rendering of the decision, a notice of appeal upon a form titled "Application to Board of Adjustment" provided for such purpose by the Development Services Department. The notice of appeal shall be filed with the Development Services Department, with a copy to the City Secretary, and shall specify the grounds thereof. The application shall not be considered as filed until information required on the prescribed application form and associated fees have been provided in full. The City Secretary shall forthwith transmit to the Board all papers constituting the record in the matter being appealed.

(Ord. No. 253, §1 (art. XIII, §5), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-436. Application fees.

- (a) When an application is filed for a special exception or variance, such application shall be accompanied by the fees in conformance with the City's fee schedule. The fees must be in the form of a certified or cashier's check, money order, or credit card payment made payable to the City of Helotes, and be deposited with the Development Services Department at the time the application is filed and shall forthwith be credited to the General Fund of the City.
- (b) No notice of any such application shall be issued and no hearing shall be presented before the Board of Adjustment until the prescribed fees are paid. The Development Services Department shall keep and preserve an itemized record of all fees received and the disposition thereof for each application.

Ord. No. 491, §1, 01-24-2013)

Sec. 98-437. Stay of proceedings.

An appeal shall stay all proceedings in the matter, unless the officer from whom the appeal is taken certifies in writing to the Board of Adjustment that a stay would, in his opinion, cause imminent peril of life or property. (Ord. No. 253, §1 (art. XIII, §6), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-438. Hearing of appeals.

The City Administrator and City Staff shall fix a reasonable time for the hearing of an appeal and shall give notice to the parties of interest. In addition, at least 16 days advance notice shall be given by publication in a newspaper of general circulation in the City, stating the date, time, and place of the hearing, the parties appealing such matter, and the lot description of the land which the matter concerns. The City shall mail notices of such hearings to the petitioners and owners of property at any point within 200 feet of any point of land on which a variance or special exception is desired and to all other persons deemed by the City to be affected or to be parties in interest. Such owners and persons shall be determined according to the current tax roll of the City. In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of appeal, and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board of Adjustment shall be necessary to reverse the order, requirement, decision, or determination of any Building Official or administrative officer. The concurring vote of four members of the Board of Adjustment shall also be necessary to decide in favor of an applicant on any matter upon which the Board of Adjustment is required to pass upon under this Chapter other than an appeal. All votes shall be made by roll call. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the City Secretary and shall be of public record.

(Ord. No. 253, §1 (art. XIII, §7), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-439. Court appeal.

- (a) *Presentation of petition.* Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the City, may present to a District Court, County Court, or County Court at Law, as provided by law, a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Court within ten days after the filing of the decision of the Board of Adjustment with the City Secretary.
- (b) *Writ of certiorari.* Upon the presentation of such petition, the Court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto must be made and served, which shall not be less than ten days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the Board, and on due cause shown, grant an order that specifically grants a stay through a restraining order.
- (c) Return of certified copies.
 - (1) The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ of certiorari as provided for in subsection (b). Returned copies shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be certified.
 - (2) If upon the hearing it shall appear to the Court that testimony is necessary for the proper disposition of the matter, the Court shall take evidence, appoint a referee to take evidence as it may direct, and report the same with its findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm wholly or partly, or may modify, the decision brought up for review.
 - (3) Costs shall not be allowed against the Board of Adjustment, unless it shall appear to the Court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- (d) *Fee.* In the event jurisdiction of the Board of Adjustment is found not to exist with regard to the issue brought to the Board, a partial reimbursement of the fee, as established by the fee schedule of the City, shall be refunded.

(Ord. No. 253, §1 (art. XIII, §8), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Secs. 98-440 - 98-460. Reserved.

ARTICLE XIV. ADMINISTRATION AND ENFORCEMENT

Sec. 98-461. Building permit and plan requirements.

No building or structure shall be erected, added to, or externally altered until a permit therefore has been issued by the Development Services Department. All applications for such permits shall be in accordance with the requirements of this Chapter and, unless upon written order of the Board of Adjustment, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this Chapter.

- (1) *Information to accompany application.* There shall be submitted with all applications for building permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and/or accessory buildings to be erected and those already existing, and such other information as may be necessary to determine and provide for the enforcement of this Chapter.
- (2) *Issuance of permit.* One copy of such layout or plot plan and approved building permit shall be returned to the submitter when approved by the Development Services Department and the receipt of the prescribed fee.
- (3) *Fee.* The fee for issuance of a building permit shall be in accordance with the City fee schedule.

(Ord. No. 253, §1 (art. XIV, §1), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-462. Effect of chapter on existing permits, agreements and rights; conflicting regulations.

- (a) *Existing permits and private agreements.* This Chapter is not intended to abrogate or annul:
 - (1) Any permits issued before the effective date of this Chapter;
 - (2) Any easement, deed restriction, or other private agreement more restrictive than the provisions of this Chapter.
- (b) *Effect of other ordinances and regulations.* Whenever higher or more restrictive standards are established by the provisions of any other applicable statute, ordinance, or regulations than are established by the provisions of this Chapter, the provisions of such other statute, ordinance, or regulations shall govern, but will not be enforced as a part of this Chapter.
- (c) *Offenses and liabilities preserved.* All offenses committed and all liabilities incurred prior to the effective date of this Chapter shall be treated as though all prior applicable zoning ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action, or prosecution with respect to such offenses and liabilities.

(Ord. No. 253, §1 (art. XIV, §2), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-463. Certificate of occupancy.

- (a) *Required for certain uses.* Certificates of occupancy shall be required for:) Required for certain uses. Certificates of Occupancy shall be required for:
- (1) Occupancy and use of a building hereafter erected or structurally altered, other than those buildings located within a Single-Family Residential (R-1) District and intended to be used as a residence.
 - (2) Change in use of an existing building.
 - (3) Change in the use of land to a use of a different classification.
 - (4) Occupancy and use of vacant land.
 - (5) Any change in the use of a nonconforming use.
 - (6) All businesses located within the City.
- (b) *Nonconforming uses.* A Certificate of Occupancy shall be required for all lawful nonconforming uses of land or buildings created by the adoption of this Chapter. A nonconforming use is any use which was lawfully operated in accordance with the provisions of any prior Zoning ordinance on the effective date of the ordinance from which this Chapter is derived; or on or after the effective date of the ordinance from which this Chapter is derived was lawfully operated in accordance with the provisions of this Chapter, but which use, by reason of amendment to this Chapter, or other governmental action, is not a permitted use in the district in which the use is located;
- (c) *Procedure.* Written application for a Certificate of Occupancy for a new building or for an existing building which has been altered shall be made at the same time as the application for the building permit for such building. The Certificate shall be issued within ten days of completion of construction or alteration. Written application for a Certificate of Occupancy for the use of vacant land, or for a change in nonconforming use, as herein provided, shall be made to the Development Services Department. If the proposed use is in conformity with the provisions of this Chapter, the Certificate of Occupancy therefore shall be issued. The fee for such Certificate of Occupancy shall be in accordance with the City schedule of fees, to be paid to the City at the time the building permit is issued. Every Certificate of Occupancy shall state that the building or the proposed use of a building or land complies with all provisions of this Chapter. A record of all Certificates of Occupancy shall be kept on file with the Development Services Department.

(Ord. No. 253, §1 (art. XIV, §3), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-464. Enforcement officials; right of entry.

- (a) *Enforcement officials.* The provisions of this Chapter shall be administered and enforced by the City Administrator or his/her designee, the Planning and Zoning Commission, the Building Official, and the Code Enforcement Officer.

- (b) *Right of entry.* The Building Official, City Administrator or his/her designee, members of the Planning and Zoning Commission, Code Enforcement Officer, or any duly authorized person shall have the right to enter upon any premises at any reasonable time prior to the completion of the buildings for the purpose of making inspections of buildings or premises necessary to carry out his duties in the enforcement of this Chapter.

(Ord. No. 253, §1 (art. XIV, §4), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-465. Stop orders.

Whenever any building work is being done contrary to the provisions of this Chapter, the Building Official, Code Enforcement Officer, or City Administrator may issue a stop order to the owner or contractor doing or causing such work to be done, and any such person shall forthwith stop such work until authorized by the Building Official, Code Enforcement Officer, or City Administrator to proceed with the work.

(Ord. No. 253, §1 (art. XIV, §5), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-466. Penalty; additional remedies.

If any person, firm, or corporation violates any of the provisions of this Chapter or fails to comply therewith, the City, in addition to imposing Class C misdemeanor penalties upon conviction, may institute any appropriate action or proceedings in Court to prevent any illegal act, conduct, business or use in or about any land, and the definition of any violation of the terms of this Chapter as a misdemeanor shall not preclude the City from invoking the civil remedies given it by law in such cases, but same shall be cumulative of and in addition to the penalties prescribed for such violations. (Ord. No. 253, §1 (art. XIV, §6), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

APPENDIX A: SCHEDULE OF USES